

NO. 25938

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

CHRISTOPHER M. CAMPBELL, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-2845)

ORDER VACATING THE JUDGMENT OF CONVICTION AND REMANDING THIS CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO HOLD A NEW TRIAL
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Upon review of the parties' briefs and the record, it appears that Plaintiff-Appellee State of Hawaii's (Appellee State) confession of the circuit court's error is supported by the record and well-founded in law. State v. Hoang, 93 Hawai'i 333, 336, 3 P.3d 499, 502 (2000). During Defendant-Appellant Christopher M. Campbell's (Appellant Campbell) trial for robbery in the first degree in violation of HRS § 708-840(1)(b)(ii) (Supp. 2003), the circuit court, the Honorable Michael D. Wilson presiding, plainly erred when the circuit court failed to establish through an on-the-record colloquy directly with Appellant Campbell that Appellant Campbell knowingly and voluntarily waived his constitutional right to testify. State v. Staley, 91 Hawai'i 275, 287, 982 P.2d 904, 916 (1999) (defense counsel may not waive a defendant's constitutional right to testify; only the defendant may relinquish the right to testify). Therefore,

IT IS HEREBY ORDERED that Appellant Campbell's conviction for robbery in the first degree in violation of

HRS § 708-840(1)(b)(ii) (Supp. 2003) is vacated, and this case is remanded to the Circuit Court of the First Circuit, State of Hawai'i, with instructions to hold a new trial.

DATED: Honolulu, Hawai'i, May 21, 2004.